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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

7
8 THE UNITED STATES OF AMERICA,
9

10 Plaintiff,

11 Vs.

12 CLIVEN D. BUNDY,
13

14 Defendant.

15 CASE NO.: 2:16-cr-00046-GMN-PAL

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17 **DEFENDANT CLIVEN D. BUNDY'S**
EMERGENCY MOTION TO DISMISS
FOR DISCOVERY MISCONDUCT

18 (REQUEST FOR AN EXPEDITED
HEARING – EVIDENTIARY HEARING
19 REQUESTED)

20 COMES NOW, CLIVEN D. BUNDY, ESQ., by and through BRET O .WHIPPLE,
21 ESQ., and hereby enters the following Motion to Dismiss for Discovery Misconduct. This
22 motion is based upon the memorandum of points and authorities included herein, as well as
other pleadings on file with this Court, and any evidentiary hearing conducted as it relates to
the subject matter of the present motion.

23 DATED THIS 6th day of November, 2017.

24
25 **JUSTICE LAW CENTER**
26 /s/ Bret O. Whipple, Esq.
Bret O. Whipple, Esq.
Bar No 6168

MEMORANDUM OF POINTS AND AUTHORITIES

A specter is haunting this case – the specter of repeated and ongoing discovery misconduct by the United States. All of the power of the United States, exercised through its law enforcement agencies and through the United States Attorney's Office has generated a fog that obfuscates the truth surrounding the events of March, 2014 and April, 2014. This situation exists as a direct result of the prosecution's ongoing failure to abide by the rules of discovery and disclose discoverable evidence. Those obfuscatory discovery practices have continually thwarted defense efforts to acquire and review helpful or exculpatory evidence and use that evidence to prepare for trial. The government's bad faith misconduct is ongoing, and the defense has often been left wondering what *other evidence* remains undisclosed by the United States simply because such evidence would make the United States look bad or would reveal government misconduct against citizens lawfully protesting in the United States.

The defendants, including Cliven Bundy, cannot receive a fair trial under these circumstances. The public cannot rest assured that justice is going to be done in a criminal trial when everyone involved is left wondering what exculpatory evidence, unknown to the defense, remains hidden. The only appropriate remedy under the circumstances is dismissal of the indictment, with prejudice, as to all defendants.

I. BACKGROUND INFORMATION.**A. Discovery Allegations in Sealed Motion ECF No. 2727.**

The defense, and this Court, now knows that law enforcement or bureaucratic agents, including the government eye-witness (SAC Dan Love) who commanded the operation against the Bundys, has a long history of, to put it diplomatically, manipulative practices, including the

1 misuse of his official position. *See* ECF No. 2727. We know now that that same officer has
2 previously pressured, or otherwise acted inappropriately, in his direction of other law
3 enforcement officers, including several government witnesses who have testified in this case.
4 *Id.* This information was not fully disclosed to the defense, and indeed, there is evidence that
5 such material was affirmatively hidden from the court and the defense. *Id.* These matters are
6 currently subject of a sealed Motion to Dismiss [ECF No. 2727] which defendant Bundy has
7 joined [ECF No. 2737].

8 This same agent who has, in other instances, engaged in misconduct towards his
9 subordinate employees and the public, had nearly complete access to all law enforcement
10 personnel, including BLM witnesses, at the time they formulated their reports and memoranda
11 in April, 2014. We know now that this officer intended to build evidence for a criminal case
12 against the Bundys at the time he had direct access to his subordinates who are witnesses in this
13 case, including subordinates he has corruptly pressured in other instances. None of this
14 information was affirmatively disclosed by the United States. The defense discovered it late
15 through collateral happenstance, and even when it has been disclosed in response to defense
16 motions and proceedings in this case, the most pertinent portions have often been minimized or
17 withheld by the United States' Attorney's Office, purportedly because those portions were
18 irrelevant. *See* ECF No. 2727, Motion to Dismiss.

19 **B. Ryan Bundy's Specific Demands Regarding Surveillance Evidence.**

20 The defendants have long suspected *other forms* of government misconduct which they
21 could not immediately prove. From the time the events occurred in April of 2014, there have
22 been reports of mysterious occurrences, government snipers aiming for the defendants,
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1 surveillance of their residence and personal property through covert government operations,
2 and numerous other incidents allegedly witnessed by the defendants or other pro-civil-liberty
3 witnesses in April, 2014.

4 Specifically, defendant Ryan Bundy moved to discover evidence relating to surveillance
5 equipment being used against the Bundy home and the American People in March and April,
6 2014. *See* ECF No. 2299. The prosecution was evasive in its response, where it claimed that
7 Bundy failed to meet and confer regarding discovery, and that is claims were part of a
8 “fantastical fishing expedition.” ECF No. 2340. While the government did not explicitly deny
9 the existence of the requested surveillance evidence, the implication of its response was that
10 Ryan Bundy’s theories were too crazy to be given serious consideration by the court.
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12 **C. Cliven Bundy’s Attempts to Obtain Evidence from United States.**

13 The prosecution in this case has an affirmative duty to disclose evidence to the defense
14 through discovery. Because the prosecution has failed to disclose favorable evidence later
15 discovered serendipitously by the defense, Cliven has been forced to seek to discover evidence
16 through collateral legal maneuvering.
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18 Specifically, Bundy has sought evidence through Freedom of Information Act (“FOIA”)
19 requests. Because the United States failed to properly respond to those FOIA requests, a civil
20 suit was filed by Freedom Watch on Mr. Bundy’s behalf. *See* Exhibit A, Civil Complaint Case
21 No. 1:16-cv-02320-CKK. This FOIA request also sought discoverable material which would
22 have included surveillance video live feed, which must have also been streamed back to FBI
23 headquarter computers, of the Bundy home during March and April of 2014. *Id.* The FBI
24 estimated it would take almost forty-one (41) years to deliver the requested documentation to
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1 Bundy, and to date, no material has been delivered. *See* Exhibit B, FBI's Status Report and
2 Proposed Schedule.

3 **D. Testimony Reveals that the Surveillance Evidence Exists.**

4 The defendants had previously filed a motion for relief regarding the government's
5 destruction of evidence, specifically, the government's shredding of documents in the aftermath
6 of the events of April, 2014. *See* ECF No. 1878, Motion to Dismiss. During the testimony of
7 witness Mary Hinson, it was revealed that a "live video feed" depicting the Bundy home, and
8 ingress and egress from the home, was being piped in to the BLM "Command Center" during
9 the events in question. Furthermore, it was revealed that SAC Dan Love, among others, had
10 access to this live video feed.¹

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12 The existence of this video surveillance has never been disclosed to the defense. No
13 copy of the video has been produced pursuant to the government's affirmative duty to disclose
14 relevant and material evidence to the defense. As mentioned earlier, when allegations that such
15 video exists was made by Ryan Bundy, the government called it a "fantastical fishing
16 expedition." The defense first learned of the actual existence of such facts and evidence on
17 November 3, 2017, *after* trial had already begun. On November 3, 2017, counsel for Cliven
18 Bundy e-mailed the prosecution demanding the disclosure of the surveillance evidence that had,
19 thus far, been hidden from the defense. *See* Exhibit C, Letter to Prosecution.

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24 ¹ Counsel for Cliven Bundy has requested the transcript from this hearing on an expedited basis,
25 however, the transcript has not been produced as of the time of this filing, and therefore, the
26 exact testimony of the witness cannot be cited at this time. The Court is aware of the nature of
27 the witness's testimony, and this motion can be supplemented once the transcript is produced.

II. LEGAL STANDARDS.

A. Brady, Giglio, Jencks, and Discovery Procedure.

The prosecution has “an affirmative duty to disclose information favorable to a defendant.” *Kyles v. Whitley*, 514 U.S. 419, 432 (1995). If the government has no inculpatory information of the alleged offenses, the absence of such evidence ipso facto constitutes exculpatory information, such as showing video of the alleged crime scene that lacks evidence of any criminal conduct. This duty extends to “impeachment” evidence, *Id.* at 433, and requires an “individual prosecutor . . . to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.” *Id.* at 437. The Ninth Circuit has ruled that the prosecution has the specific duty to “to produce any favorable evidence in the personnel records of an officer.” *United States v. Cadet*, 727 F.2d 1453, 1467 (9th Cir. 1984). If there is any doubt about disclosure requirements, the prosecution can “may submit the information to the trial court for an *in camera* inspection.” *Id.* at 1467-68. A prosecutor “anxious about tacking too close to the wind will disclose a favorable piece of evidence.” *Kyles* at 439.

To establish a *Brady* violation, three elements - favorability, suppression, and materiality - must be shown. That is, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *United States v. Olsen*, 704 F.3d 1172, 1181 (9th Cir. 2013) (alteration in original) (citations and quotation marks omitted). Suppression may be either intentional or inadvertent, and even "[a]n innocent failure to disclose favorable evidence constitutes suppression . . ." *Id.* at 1182 (citations omitted). A *Giglio* violation occurs where the prosecution suppresses

1 evidence that impeaches a witness's credibility. *Giglio*, 405 U.S. at 154. Materiality, the third
2 element of a *Brady/Giglio* violation, can be the most elusive.

3 Discovery in federal criminal cases is generally governed by Fed. R. Crim. P. 16. Rule
4 16 is broader than *Brady*, "requiring disclosure of all documents 'material to preparing the
5 defense.'" *United States v. Muniz-Jaquez*, 718 F.3d 1180, 1183 (9th Cir. 2013) (quoting Fed. R.
6 Crim. P. 16(a)(1)(E)(i)). Rule 16(a)(1)(E) provides for the production of discovery, upon a
7 defendant's request. It directs: "[T]he government must permit the defendant to inspect and to
8 copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or
9 places, or copies or portions of any of these items, if the item is within the government's
10 possession, custody, or control and: (i) the item is material to preparing the defense; (ii) the
11 government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained
12 from or belongs to the defendant."

13 "Evidence is 'material' under Rule 16 if it is helpful to the development of a possible
14 defense." *United States v. Budziak*, 697 F.3d 1105, 1111-12 (9th Cir. 2012) (citing *United States*
15 v. *Olano*, 62 F.3d 1180, 1203 (9th Cir. 1995)), *cert. denied*, 133 S. Ct. 1621, 185 L. Ed. 2d 605
16 (2013). The government is required to provide discovery in its possession or if the "prosecutor
17 has knowledge of and access to the documents sought by the defendant." *United States v.*
18 *Santiago*, 46 F.3d 885, 893 (9th Cir. 1995). A "prosecutor will be deemed to have knowledge
19 of and access to anything in the possession, custody or control of any federal agency
20 participating in the same investigation of the defendant." *United States v. Bryan*, 868 F.2d 1032,
21 1036 (9th Cir. 1989).

1 In the event that a Court does find *Brady*, *Giglio*, or *Jencks* violations, dismissal is
2 within its power to grant as a remedy. "[First, a] district court may dismiss an indictment on the
3 ground of outrageous government conduct if the conduct amounts to a due process violation.
4 [Second, i]f the conduct does not rise to the level of a due process violation, the court may
5 nonetheless dismiss under its supervisory powers." *United States v. Chapman*, 524 F.3d 1073,
6 1084 (9th Cir. 2008) (quoting *United States v. Barrera-Moreno*, 951 F.2d 1089, 1091 (9th Cir.
7 1991)). However, a district court's supervisory powers are limited to three areas pertinent: "(1)
8 to implement a remedy for a violation of recognized rights; (2) to preserve judicial integrity by
9 ensuring that a criminal conviction rests on appropriate considerations validly before the jury;
10 and (3) to deter future illegal conduct." *United States v. W.R. Grace*, 526 F.3d 499, 511 n.9 (9th
11 Cir. 2008) (citations omitted).

12 Likewise, in the event that the district court finds that a party committed discovery
13 violations, Rule 16(d)(2) authorizes sanctions which include ordering that party to permit the
14 discovery or inspection; granting a continuance; prohibiting that party from introducing the
15 undisclosed evidence; or entering "any other order that is just under the circumstances." Fed.
16 R. Crim. P. 16(d)(2)(A)-(D). Underlying the directives enunciated by *Brady*, *Giglio*, *Jencks*,
17 and Rule 16 is the overarching principle that the prosecuting attorney has a duty to be more
18 than a mere advocate and must, above all, seek to do justice.

19 The Supreme Court has emphasized "the special role played by the American prosecutor
20 in the search for truth in criminal trials." *Strickler v. Greene*, 527 U.S. 263, 281, 119 S. Ct.
21 1936, 144 L. Ed. 2d 286 (1999). "A prosecutor has the responsibility of a minister of justice
22 and not simply that of an advocate. This responsibility carries with it specific obligations to see
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1 that the defendant is accorded procedural justice. . . ." ABA Model Rules of Professional
2 Conduct Rule 3.8 cmt. (2002); accord ABA Standards for Criminal Justice 3-1.2(b) (3d. 1993)
3 ("The prosecutor is both an administrator of justice and an advocate. The prosecutor must
4 exercise sound discretion in the performance of his or her functions."); id. at 3-1.2(c) ("The
5 duty of the prosecutor is to seek justice, not merely to convict"); *see also Hayes v. Brown*, 399
6 F.3d 972 (9th Cir. 2005) ("The prosecuting attorney['s] . . . obligation is to govern impartially[,]
7 . . . to do justice[,] . . . [and] . . . to assure that the defendant has a fair and impartial trial")
8 (quoting *Commonwealth of The Northern Mariana Islands v. Mendiola*, 976 F.2d 475, 486 (9th
9 Cir. 1992) (citations omitted), *overruled on other grounds by George v. Camacho*, 119 F.3d
10 1393 (9th Cir. 1997) (en banc)).
11

12 A prosecutor's failure to fulfill discovery obligations, whether due to mere oversight or
13 to ill intent, defiles our system of justice and calls into question whether a defendant has been
14 afforded a fair and impartial trial. Some courts decree strong sanctions for these failures. *See*,
15 *e.g.*, *United States v. Olsen*, 737 F.3d 625, 633 (9th Cir. 2013) (Kozinski, C.J., dissenting).
16

17 **B. Outrageous Government Conduct.**

18 A district court should dismiss an indictment on the ground of outrageous government
19 conduct if the conduct amounts to a due process violation. If the conduct does not rise to the
20 level of a due process violation, the court may nonetheless dismiss under its supervisory
21 powers. *United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008).
22

23 In order to show outrageous government conduct, defendants must show conduct that
24 violates due process in such a way that it is "so grossly shocking and so outrageous as to violate
25 the universal sense of justice." *United States v. Restrepo*, 930 F.2d 705, 712 (9th Cir.
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1 1991) (quoting *United States v. O'Connor*, 737 F.2d 814, 817 (9th Cir. 1984)) (internal
2 quotation marks omitted). The defense is therefore "limited to extreme cases in which the
3 government's conduct violates fundamental fairness." [*United States v. J. Gurolla*, 333 F.3d
4 [944,] 950 [(9th Cir. 2011)]. *United States v. Stinson*, 647 F.3d 1196, 1209 (9th Cir. 2011). In
5 addition, "[a] court may dismiss an indictment under its supervisory powers only when the
6 defendant suffers substantial prejudice, and where no lesser remedial action is
7 available." *Chapman*, 524 F.3d at 1087 (citations and internal quotation marks omitted).
8

9 **III. ARGUMENT.**

10 To resolve the present motion, this Court must determine: (A) whether the government
11 committed discovery violations, engaged in misconduct, and/or acted in bad faith by failing to
12 disclose the existence of, or provide in discovery, evidence relating to the surveillance of the
13 Bundy home during the events underlying the indictment; and (B) if so, what the proper remedy
14 for is for the defendants in light of those violations and/or bad faith actions and misconduct on
15 the part of the United States.
16

17 **A. Discovery Violations, Misconduct, and Bad Faith.**

18 As mentioned previously, ECF No. 2727 is a pending motion to dismiss which
19 conclusively demonstrates the existence of other discovery violations. That motion has been
20 joined by Cliven Bundy and remains pending.
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22 The present circumstance is a separate distinct incident which, individually and
23 combined with the subject matter of ECF No. 2727, demonstrates the government's discovery
24 violations, misconduct, and bad faith. Collectively, the circumstances show "outrageous
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government conduct" exists in this case which has destroyed any chance of providing the defendants with due process and a fair trial.

1. The Live Stream Video Exists.

Live stream video surveillance conducted by the government exists because it was testified to, under oath, by a witness who has seen the video (Mary Hinson on November 3, 2017). Furthermore, apparently, Ryan Bundy or the other defendants in this case discovered what possibly electronic surveillance devices were during April, 2014, as referenced in ECF No. 2299.

2. The Video evidence is and has been in the prosecution's possession.

Regardless of what government agency has the video, be it the BLM, FBI, or some other entity, the video of the live stream is clearly in the possession of the government (and the prosecution) for the purposes of discovery, whether it be in its actual or constructive possession. Even if the prosecution were to claim it lacked actual possession of the video, at the very least, the prosecution has been on notice of the possible existence of such video since ECF No. 2299 was filed by Ryan Bundy. Furthermore, it would be impossible to believe that the prosecution --- who has extensively interviewed the eye-witnesses to this case --- was unaware of a prominently-positioned video display in the incident command center underlying one of the most heavily litigated indictments in American history. Many government witnesses, insofar as we know they were in the incident command post, must have been aware of the video stream. It would be implausible to suggest this matter never came up in discussions between the prosecution and its own witnesses.

1 3. **The evidence is material, helpful, and exculpatory.**

2 The evidence is clearly material. The United States alleges that a large-scale conspiracy
3 was orchestrated by Cliven Bundy in March and April of 2014 for the purpose of obstructing,
4 impeding, threatening, and assaulting federal officers.

5 Specifically, the government alleges that Bundy recruited and incited individuals to
6 “travel to Bundy Ranch” for unlawful purposes in furtherance of an unlawful conspiracy. *See*
7 ECF No. 27 at 13. The government alleges that Bundy (and others) used the internet to facilitate
8 interstate travel for the aims of the conspiracy. *Id.* Bundy was allegedly the “ultimate authority”
9 over the scope, manner, and means of the conspiracy operation. *Id* at 15. Bundy was allegedly
10 involved in planning, making public statements, and using internet devices from Bundy Ranch
11 in the lead up to the events of April 12, 2014. *Id* at 16-21.

12 Bundy is charged with fifteen (15) counts. As this Court can see, and as the United
13 States is aware, Cliven Bundy was not physically present during most of the events underlying
14 the specific counts of the indictment. Specifically:

15 **Count Four – Assault:** alleges that on April 9, allegations that the defendants assaulted
16 and intimidated federal officers engaged in their official duties by interfering with a BLM
17 convoy during impoundment operations. The evidence will show that Cliven Bundy was not
18 present during the alleged incident. As a result, Cliven is charged was (1) part of a conspiracy
19 and (2) under 18 U.S.C. 2 aiding and abetting.

20 **Count Five – Assault:** alleges that on April 12, 2014, federal officers were assaulted
21 by the defendants at the impoundment site. The evidence will show that Cliven Bundy was not
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1 present during the alleged incident. As a result, Cliven is charged was (1) part of a conspiracy
2 and (2) under 18 U.S.C. 2 aiding and abetting.

3 **Count Seven – Threats:** alleges that on April 11, 2014, defendant Santilli confronted
4 SAC Love at the Impoundment Site and made unlawful threats on behalf of Cliven Bundy. The
5 evidence will show that Cliven Bundy was not present during the alleged incident. As a result,
6 Cliven is charged was (1) part of a conspiracy and (2) under 18 U.S.C. 2 aiding and abetting.

7 **Count Eight – Threats:** alleges that on April 12, 2014, defendants allegedly confronted
8 SAC Love at the Impoundment Site and made unlawful threats on behalf of Cliven Bundy. The
9 evidence will show that Cliven Bundy was not present during the alleged incident. As a result,
10 Cliven is charged was (1) part of a conspiracy and (2) under 18 U.S.C. 2 aiding and abetting.

11 **Counts Ten, Eleven, and Twelve – Obstruction:** alleges that on April 6, 2014 R.
12 Bundy and D. Bundy attempted to impede and obstruct a BLM convoy. Next, Count Eleven
13 alleges that on April 9, 2014 the defendants obstructed a BLM convoy. Next, Count Twelve,
14 alleges that on April 12, 2014 the defendants impeded the impoundment of cattle at the
15 Impoundment Site. The evidence will show that Cliven Bundy was not present during any of
16 the alleged incidents. As a result, Cliven is charged was (1) part of a conspiracy and (2) under
17 18 U.S.C. 2 aiding and abetting.

18 As this Court can see, Cliven's alleged liability does not arise out of his physical conduct
19 or physical presence where the specific incidents occurred. Instead, the indictment seeks to
20 prove Cliven's guilt by showing that he was the leader of a conspiracy, orchestrated in person
21 and through the internet, out of his home at Bundy Ranch and upon the stage where he
22 occasionally made political speeches, and otherwise aided and abetted the "direct actors". This
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1 necessarily indicates that the alleged "crime scene" used by Cliven Bundy is his "headquarters",
2 i.e., his home upon Bundy Ranch. The government alleges this is where he met with, organized,
3 and instructed other members of the conspiracy, as well as the location Bundy used phone or
4 internet to coordinate with other conspirators.

5 As a result of these circumstances, much "material evidence" must necessarily exist in
6 a video surveillance of Bundy's home. At minimum this would include: (1) video evidence
7 regarding the number of individuals, and the identity of individuals, entering and exiting Bundy
8 ranch; (2) where Bundy was during the events of April, 2014; (3) who, besides Bundy and the
9 co-defendants, had access to internet and communication devices at Bundy ranch, which is
10 material to the question of who sent certain particular communications which are the subject of
11 this case; and (4) the presence of politicians, or media members, at Bundy ranch, which is
12 relevant to portions of the defense's theory of the case (i.e. that Bundy, rather than pursuing a
13 criminal conspiracy, attempted to pressure the BLM to cease its operations through lawful
14 appeals to the public through politicians and the media).

17 Furthermore, the existence and content of the video surveillance is relevant (1) to
18 explain the defendant's beliefs regarding government misconduct, (2) to explain their fears of
19 government aggression, (3) to explain the non-criminal reason so-called militia members came
20 to Bundy's property (i.e. the reasonable fear of government who was spying on the Bundy's
21 and could turn to aggressive violence at any moment); and (4) possible motives of the
22 government, its agents, and its witnesses during trial, to exaggerate evidence for the purposes
23 of incarcerating Bundy and the other defendants, to cover-up government misconduct,
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1 including but not limited to, to suppress the Bundys' knowledge of government spying and
2 surveillance of U.S. citizens.

3 Furthermore, the video is likely material in a multitude of additional ways not currently
4 known to the defense *precisely because* the evidence has been suppressed by the United States,
5 as the defense has been excluded from viewing the video, or indeed, even knowing about its
6 very existence until trial had already begun. The video is literally a video of the crime scene,
7 while Cliven Bundy was present, during which he was allegedly committing his crime. Without
8 access to the video, and the ability to closely parse the video for favorable defense evidence,
9 there is no way for Bundy to explain its full materiality to the court.

10

11 4. **The prosecution acted in bad faith in failing to disclose the existence of the**
12 **evidence and by failing to provide the evidence in discovery.**

13 Not only has the government failed to meet its affirmative discovery obligations, it has
14 actively obscured the matter by suggesting the surveillance video was part of a "fantastical
15 fishing expedition" previously pursued by defendant Ryan Bundy. Although the government
16 did not explicitly state that the Bundy home was not the target of extensive electronic
17 surveillance, the suggestion in the government's ECF No. 2340 was that the existence of such
18 technological surveillance by the government was a fantasy of the pro per defendant Ryan
19 Bundy. The fact that the government made this characterization *while knowing* that the
20 electronic surveillance technology was used by the government in a manner incredibly similar
21 to that described by Ryan Bundy is evidence of bad faith and the suppression of discoverable
22 evidence by the government.

5. Proper Remedy.

No remedy, other than dismissal with prejudice, can protect the constitutional rights of the defendants to be free from this type of discovery misconduct and outrageous government conduct. Trial has already begun. The defendants have been incarcerated for almost two entire years without receiving trial. Even when trials have been held, the United States has been nearly uniformly unable to convince any juror that any of the defendants engaged in any wrong-doing. Even the two convictions obtained, out of many numerical chances when considering successive trials on dozens of counts, were not convictions for conspiracy. A continuance, causing the defendants to lose an additional year of their life while these matters of misconduct are investigated by the defense, is not a remedy which would protect fairness, due process, or the Constitution. Given the apparent bad faith of the government, and given the discovery of this matter at the start of trial, no remedy will protect the defendants' rights other than dismissal.

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IV. Conclusion.

In any criminal proceeding, the parties, the court, and the public, must be able to believe that the proceedings will be fair, just, and aimed at the determination of truth.

Where faith in a fair proceeding is diminished to the point that no side can believe the representations of the other, and where the suspicion of hidden evidence infects the entirety of the case, the case simply cannot go on.

Unfortunately, this case has reached the point where faith in an open and fair proceeding, aimed at truth, is no longer plausible. The government's repeated failure to abide by its affirmative duty to disclose evidence has undermined the appearance of justice so fundamentally that no result reached in this case can protect the constitutional rights of the defendants, and the virtue of this court, other than dismissal.

DATED THIS 6th day of November, 2017

JUSTICE LAW CENTER
/s/ Bret O. Whipple, Esq.
Bret O. Whipple, Esq.
Bar No 6168

CERTIFICATION OF SERVICE

I hereby certify that on the 6th day of November, 2017 a true and correct copy of the foregoing MOTION TO DISMISS was delivered via E-filing to:

DANIEL BOGDEN
United States Attorney

STEVEN MYHRE
First Assistant United States Attorney

NICHOLAS DICKINSON
Assistant United States Attorney

NADIA AHMED
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/S/ Tatum Wehr
An Employee of Justice Law Center

EXHIBIT A

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FREEDOM WATCH,
2020 Pennsylvania Ave. NW, Suite 345
Washington, DC, 20006

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT
1849 C Street NW, Room 2134LM
Washington, DC, 20240

and

U.S. DEPARTMENT OF JUSTICE
1100 L Street NW, Room 8020
Washington, DC, 20530

Defendants.

COMPLAINT

Plaintiff FREEDOM WATCH, INC. (“Plaintiff”) brings this action against Defendants Bureau of Land Management (“BLM”) and the Department of Justice (“DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefore, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5. U.S.C. § 552(a)(4)(B) and 28 U.S.C 1331.
2. Venue is proper in this district pursuant to 28. U.S.C. 1391(e)

PARTIES

3. Plaintiff Freedom Watch, Inc. is a 501(c)(3), non-profit, public interest foundation organized under the laws of the District of Columbia and having its principal place of business at 2020 Pennsylvania Ave., NW Suite 345, Washington, DC, 20006. Plaintiff seeks to promote openness within the federal government and their actions. Plaintiff regularly requests records under FOIA to shed light on the operations of the federal government and to educate the public about these operations. Plaintiff then analyzes the agency records and disseminates the results of its analysis to the public.

4. Defendants are agencies of the United States Government. Defendants have possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On October 7, 2016, Plaintiff sent FOIA requests to Defendant BLM and Defendant DOJ by certified mail and facsimile, seeking the production of agency records relating to:

- (1) Any and all documents that refer or relate in any way to Cliven Bundy;
- (2) Any and all documents that refer or relate in any way to the case of *United States v. Cliven Bundy*, in the U.S. District Court for the District of Nevada, which may or may not also be identified in particular records by Civil Action No. or Case No. 2:12-cv-0804;
- (3) Any and all documents that refer or relate in any way to any criminal prosecution of Cliven Bundy, including discussions, arguments or proposals about whether Cliven Bundy ought to be prosecuted at any time after January 2010;
- (4) Any and all documents that refer or relate in any way to plans, efforts, strategies, and/or implementation of criminal prosecution of Cliven Bundy at any time after January 2010;
- (5) Any and all documents that refer or relate in any way to the case of *United States v. Cliven Bundy*, in the U.S. District

Court for the District of Nevada, which may or may not also be identified in particular records by Criminal Action No. or Case No. 2:16-CR-00046-1;

- (6) Any and all documents that refer or relate in any way to criminal prosecution of Ammon Bundy and others in the U.S. District Court for the District of Oregon during 2016;
- (7) Any and all documents that refer or relate in any way to an incident known as the “Bundy Standoff,” in Clark County, Nevada, from January 2014 through May 2014, but primarily in March and April of 2014;
- (8) Any and all documents that refer or relate in any way to an incident in which Cliven Bundy and supporters faced off against personnel of the Bureau of Land Management at or near Bundy’s ranch located near Bunkerville, Nevada in Clark County, Nevada, from January 2014 through May 2014, but primarily in March and April of 2014;
- (9) Any and all documents that refer or relate in any way to an incident in the Malheur National Wildlife Refuge in Oregon in and around December 2015 and/or January 2016, which may be described in documents as protests, occupation, demonstrations, a takeover of government buildings, and/or opposition to the treatment by the Bureau of Land Management or the U.S. Government in general of ranchers;
- (10) Any and all documents that refer or relate in any way to protests in Oregon in 2015 or 2016 concerning Dwight Hammond and/or Steven Hammond. For identification purposes, this request refers to that Dwight Hammond and Steven Hammond who are father and son cattle ranchers, and who are accused of setting fire to public land while they claim that they were conducting a controlled burn of their own land next door;
- (11) Any and all documents, created in or after January 2010 that refer or relate in any way to the Cliven Bundy Ranch in Clark County, Nevada;
- (12) Any and all documents that refer or relate in any way to the group of citizens from throughout the United States who protested against the government in March and/or April 2014 at or near Bunkerville, Nevada in Clark County, Nevada;

- (13) Any and all documents that refer or relate in any way to stand-off(s), clash(es), demonstrations and/or protests opposing agents from the Bureau of Land Management in March or April of 2015, at or near Bunkerville, Nevada in Clark County, Nevada;
- (14) Any and all documents that refer or relate in any way to Senator Harry Mason Reid in the possession, custody or control of BLM, excluding newspaper or other news reports;
- (15) Any and all documents that refer or relate in any way to Senator Harry Mason Reid and all real estate purchase deals that he is involved with;
- (16) Any and all documents that refer or relate in any way to plans, proposals, strategies, or requests from, by, or of Senator Harry Reid for the use of land administered by the Bureau of Land Management in Clark County, Nevada;
- (17) Any and all communications between Senator Harry Reid and your agency which refer or relate in any way to Cliven Bundy;
- (18) Any and all documents that refer or relate in any way to Rory Reid and all real estate sale and or purchase deals that he is involved with;
- (19) Any and all documents that refer or relate in any way to plans, proposals, strategies, or requests from, by, or of Rory Reid for the use of land administered by the Bureau of Land Management in Clark County, Nevada
- (20) Any and all communications between Rory Reid and your agency which refer or relate in any way to Cliven Bundy;
- (21) All documents created on or after January 1, 2012, which report, discuss, describe, explain, refer to, or relate in any way to any plan or proposal for the BLM or agents for the BLM to take physical possession or custody of Cliven Bundy's cattle within Clark County in the State of Nevada; and
- (22) All documents created on or after October 1, 2013, which report, discuss, describe, explain, refer to, or relate in any way to any plan or proposal to employ or deploy any U.S. Government employees carrying guns to remove Cliven Bundy's cattle within Clark County in the State of Nevada. ("Plaintiff's FOIA Request")

6. A true and correct copy of Plaintiff's FOIA Request and Proof of Service are attached hereto as **Exhibit A**.

7. Defendants BLM and DOJ were required to determine whether to comply with Plaintiff's FOIA Request within 20 days, excepting Saturdays, Sundays, and legal public holidays, pursuant to 5 U.S.C. § 552(a)(6)(A). Pursuant to this same provision, Defendants BLM and DOJ also were required to notify Plaintiff immediately of this determination, the reasons therefore, and the right to appeal any adverse determination to the head of the agency. Excluding weekends, and October 10, 2016 in observance of Columbus Day, Defendants BLM and DOJ were required to make its determination and provide Plaintiff with requisite notifications regarding Plaintiff's First FOIA Request by November 7, 2016

8. As of the date of this Complaint, the Defendants BLM and DOJ have failed to make bona fide, good faith, much less any, determinations about whether they will comply with either of Plaintiff's requests. Nor have Defendants BLM and DOJ produced any records responsive to either request, indicated when any responsive records will be produced, or demonstrated that specific responsive records are exempt from production. The attached FOIA requests and Plaintiff's response to Defendants' failure to produce records, failure to say when any such records will be produced, and failure to grant expedited treatment and feed waivers demonstrates that any administrative appeal would be futile and thus the complaint is being filed upon notification to the agency. *See Singh v. Ashcroft*, 362 F.3d 1164, 1169 (9th Cir. 2004) (A plaintiff need not "exhaust administrative remedies that would be futile" to exhaust.). *See also Sokha Sun v. Ashcroft*, 370 F.3d 932, 943 (9th Cir. 2004) ("where the agency's position on the

question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.”).

CAUSE OF ACTION
(Violation of FOIA, 5 U.S.C. § 552)

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.
10. Defendants are unlawfully withholding records requested by Plaintiff's FOIA Request pursuant to 5 U.S.C. § 552 as set forth in Exhibit A, which is incorporated herein by reference.
11. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform its conduct to the requirements of the law.

12. Plaintiff respectfully requests a FOIA fee waiver pursuant to 5 U.S.C. § 552, as Plaintiff is a non-profit, public interest organization that seeks to promote openness within the federal government and their actions. Plaintiff regularly requests records under FOIA to shed light on the operations of the federal government and to educate the public about these operations. Plaintiff then analyzes the agency records and disseminates the results of its analysis to the public at large.

WHEREFORE, Plaintiff respectfully request that the Court: (1) order Defendants to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendants to produce, by a certain date, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exception.; (3) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff a fee

waiver for produced records and an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 22, 2016

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.
Freedom Watch, Inc.
D.C. Bar No. 334581
2020 Pennsylvania Ave, NW
Suite 345
Washington, DC, 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

EXHIBIT A

COMPLETE THIS SECTION ON DELIVERY		
SENDER COMPLETE THIS SECTION <ul style="list-style-type: none"> <input type="checkbox"/> Complete items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 		
1. Article Addressed to: <i>Michelle P. Land</i> FoIA Office Bureau of Land Management 1340 Financial Boulevard Reno, Nevada 89502		
2. Article Number (Transfer from service label) 7015 1520 002 1936 3436		
3. Service Type <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collected on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation™ Restricted Delivery 		
D. Is delivery address different from item 1? <ul style="list-style-type: none"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 		
If YES, enter delivery address below:		
A. Signature  B. Received by (Printed Name) <i>Angie Ceci</i> C. Date of Delivery <i>10/06/16</i>		
COMPLETE THIS SECTION ON DELIVERY		
SENDER COMPLETE THIS SECTION <ul style="list-style-type: none"> <input type="checkbox"/> Complete items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 		
1. Article Addressed to: <i>Angie Ceci</i> FoIA/City Division US Department of Justice 100 L Street, NW 8000 Washington, DC 20530		
2. Article Number (Transfer from service label) 7015 1520 002 1936 3436		
3. Service Type <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collected on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation™ Restricted Delivery 		
D. Is delivery address different from item 1? <ul style="list-style-type: none"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 		
If YES, enter delivery address below:		
A. Signature  B. Received by (Printed Name) <i>Angie Ceci</i> C. Date of Delivery <i>10/06/16</i>		

PS Form 3811, April 2015 PSN 7530-02-000-9053

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt



Dina James <daj142182@gmail.com>

Fwd: Successful transmission to 12022450027. Re: UNKNOWN

1 message

Jonathon Moseley <contact@jonmoseley.com>
 To: daj142182@gmail.com

Mon, Nov 14, 2016 at 1:35 PM

Jon Moseley
 Cell phone: (703) 656-1230
 Fax (703) 783-0449

Ryan Witt
 FOIA coordinator

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-----Original Message-----

From: send@mail.efax.com [mailto:send@mail.efax.com]
Sent: Tuesday, October 11, 2016 04:08 PM
To: contact@jonmoseley.com
Subject: Successful transmission to 12022450027. Re: UNKNOWN

This is a page 1 of a page 4 fax sent through eFax to 12022450027 was successfully transmitted at 2016-10-11 21:08:26 (GMT)



Dear Jonathon,

Re: UNKNOWN

The fax you sent through eFax to 12022450027 was successfully transmitted.

Fax Details

Date: 2016-10-11 21:08:20 (GMT)
Number of Pages: 4
Length of Transmission: 339 seconds

If you have any questions about your service please call (800) 958-2983 or visit our Online Help Center.

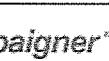
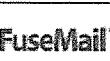
Thank you for choosing eFax.

Sincerely,

The eFax Team

Final. End. Successful transmission to 1202450027 UNKNOWN

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Dina James <daj142182@gmail.com>

Fwd: Successful transmission to 12025147866. Re: UNKNOWN

1 message

Jonathon Moseley <contact@jonmoseley.com>
 To: daj142182@gmail.com

Mon, Nov 14, 2016 at 1:35 PM

Angie Cecil
 POJ
 FOIA

Jon Moseley
 Cell phone: (703) 656-1230
 Fax (703) 783-0449

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-----Original Message-----

From: send@mail.efax.com [mailto:send@mail.efax.com]
Sent: Tuesday, October 11, 2016 04:07 PM
To: contact@jonmoseley.com
Subject: Successful transmission to 12025147866. Re: UNKNOWN

The 4 page fax you sent through eFax.com to 12025147866 was successfully transmitted at 2016-10-11 21:07:28 (GMT)



Dear Jonathon,

Re: UNKNOWN

The fax you sent through eFax to 12025147866 was successfully transmitted.

Fax Details

Date: 2016-10-11 21:07:28 (GMT)
Number of Pages: 4
Length of Transmission: 279 seconds
Receiving Machine Fax ID: 202 514 7866

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Dina James <daj142182@gmail.com>

Fwd: Successful transmission to 17758616688. Re: UNKNOWN

1 message

Jonathon Moseley <contact@jonmoseley.com>
 To: daj142182@gmail.com

Mon, Nov 14, 2016 at 1:33 PM

*Michelle Piland
 Nevada State Office*

Jon Moseley
 Cell phone: (703) 656-1230
 Fax (703) 783-0449

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-----Original Message-----

From: send@mail.efax.com [mailto:send@mail.efax.com]
Sent: Tuesday, October 11, 2016 04:08 PM
To: contact@jonmoseley.com
Subject: Successful transmission to 17758616688. Re: UNKNOWN

The 4 page fax you sent through eFax.com to 17758616688 was successfully transmitted at 2016-10-11 21:08:18 (GMT)



Dear Jonathon,

Re: UNKNOWN

The fax you sent through eFax to 17758616688 was successfully transmitted.

Fax Details

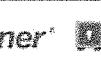
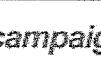
Date: 2016-10-11 21:08:18 (GMT)
Number of Pages: 4
Length of Transmission: 336 seconds
Receiving Machine Fax ID: 17758616688

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CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS Freedom Watch, Inc.		DEFENDANTS Bureau of Land Management, U.S. Department of Justice	
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)		COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED	
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Larry Klayman, Esq. 2020 Pennsylvania Ave, NW, #345 Washington, DC, 20006 310-595-0800		ATTORNEYS (IF KNOWN)	
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)		III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <u>FOR DIVERSITY CASES ONLY!</u>	
<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of this State <input type="radio"/> 1 <input type="radio"/> 1	Incorporated or Principal Place of Business in This State <input type="radio"/> 4 <input type="radio"/> 4
<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	Citizen of Another State <input type="radio"/> 2 <input type="radio"/> 2	Incorporated and Principal Place of Business in Another State <input type="radio"/> 5 <input type="radio"/> 5
		Citizen or Subject of a Foreign Country <input type="radio"/> 3 <input type="radio"/> 3	Foreign Nation <input type="radio"/> 6 <input type="radio"/> 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. <i>Antitrust</i>	<input type="radio"/> B. <i>Personal Injury/Malpractice</i>	<input type="radio"/> C. <i>Administrative Agency Review</i>	<input type="radio"/> D. <i>Temporary Restraining Order/Preliminary Injunction</i>
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="checkbox"/> 151 Medicare Act Social Security <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*

<input type="radio"/> E. <i>General Civil (Other)</i>	OR	<input type="radio"/> F. <i>Pro Se General Civil</i>	
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	Bankruptcy <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	Forfeiture/Penalty <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement	Other Statutes <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	
	Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		
	Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609		

<input type="radio"/> G. <i>Habeas Corpus/2255</i> <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. <i>Employment Discrimination</i> <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)	<input type="radio"/> I. <i>FOIA/Privacy Act</i> <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)	<input type="radio"/> J. <i>Student Loan</i> <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
(If pro se, select this deck)		*(If pro se, select this deck)*	
<input type="radio"/> K. <i>Labor/ERISA (non-employment)</i> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. <i>Other Civil Rights (non-employment)</i> <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. <i>Contract</i> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. <i>Three-Judge Court</i> <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)
V. ORIGIN <input checked="" type="radio"/> 1 Original Proceeding <input type="radio"/> 2 Removed from State Court <input type="radio"/> 3 Remanded from Appellate Court <input type="radio"/> 4 Reinstated or Reopened <input type="radio"/> 5 Transferred from another district (specify) <input type="radio"/> 6 Multi-district Litigation <input type="radio"/> 7 Appeal to District Judge from Mag. Judge <input type="radio"/> 8 Multi-district Litigation – Direct File			
VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) 5 U.S.C. § 552 (FOIA)			
VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
DATE: 11/22/2016	SIGNATURE OF ATTORNEY OF RECORD		/s/ Larry Klayman

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Freedom Watch, Inc.

Plaintiff

)
)
)
)
)

v.

Bureau of Land Management

Defendant

)
)
)

Civil Action No. 1:16-cv-2320

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bureau of Land Management
1849 C Street NW, Room 2134LM
Washington, DC, 20240

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Larry Klayman, Esq.
2020 Pennsylvania Ave, NW, #345
Washington, DC, 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 1:16-cv-2320

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*This summons for *(name of individual and title, if any)*was received by me on *(date)* I personally served the summons on the individual at *(place)*on *(date)* ; or I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or I served the summons on *(name of individual)* , who isdesignated by law to accept service of process on behalf of *(name of organization)*on *(date)* ; or I returned the summons unexecuted because

; or

 Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0 .

I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature**Printed name and title**Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Freedom Watch, Inc.

Plaintiff

v.

Bureau of Land Management

Defendant

)
)
)
)
)
)
)

Civil Action No. 1:16-cv-2320

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bureau of Land Management
1849 C Street NW, Room 2134LM
Washington, DC, 20240

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Larry Klayman, Esq.
2020 Pennsylvania Ave, NW, #345
Washington, DC, 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

FOIA Summons (12/11) (Page 2)

Civil Action No. 1:16-cv-2320

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*This summons for *(name of individual and title, if any)*was received by me on *(date)* I personally served the summons on the individual at *(place)*on *(date)* ; or I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or I served the summons on *(name of individual)* , who isdesignated by law to accept service of process on behalf of *(name of organization)*on *(date)* ; or I returned the summons unexecuted because

; or

 Other *(specify):*

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0 . . .

I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature**Printed name and title**Server's address*

Additional information regarding attempted service, etc:

EXHIBIT B

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FREEDOM WATCH,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-2320 (CKK)
)	
BUREAU OF LAND MANAGEMENT)	
and U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendants.)	
)	

FBI'S STATUS REPORT AND PROPOSED SCHEDULE

Pursuant to the Court's April 12, 2017 Order, the Federal Bureau of Investigation ("FBI"), by and through its undersigned counsel, respectfully submits this status report and proposed schedule for its processing of the at least 250,000 pages of documents responsive to Plaintiff's FOIA request seeking 22 broad categories of records concerning, *inter alia*, Cliven Bundy; the criminal prosecutions of Cliven Bundy, Ammon Bundy, and "others"; Senator Harry Reid; and Rory Reid, Senator Reid's son, from a time period dating at least as far back as 2010.

FBI began by processing public source documents in files likely to contain such information and, to date, has made two releases totaling approximately 1,000 pages. Specifically, FBI released approximately 512 pages on March 31, 2017, and approximately 500 pages on May 1, 2017. FBI anticipates making a third release of approximately 500 pages on May 31, 2017. FBI is nearing completion of the processing of these readily identifiable public source materials and estimates that it will complete its processing of these documents on or before June 30, 2017.

Although the hundreds of thousands of pages potentially responsive to the request that still need to be processed may include additional non-exempt public source documents, FBI believes

it would be inefficient to attempt to segregate those materials from the remainder of the documents because such materials are comingled with other records, and attempting such a segregation would unnecessarily extend what is already going to be a very lengthy process. Therefore, FBI proposes that it process all of the remaining documents at the rate of 500 pages per month and release to Plaintiff responsive, non-exempt records and segregable portions of records that FBI identifies in that process.¹ With each of the periodic releases FBI also proposes to notify Plaintiff of the number of processed pages it has withheld in whole or in part and the basis for any withholdings. This Court has previously approved similar processing schedules on numerous occasions. *See, e.g., Cruz v. Exec. Office for U.S. Attorneys*, 15-cv-1977 (RMC) (D.D.C.); *Farahi v. Federal Bureau of Investigation*, 15-cv-2122 (RBW) (D.D.C.); *Leopold v. Dep't of Justice*, 14-cv-327 (APM) (D.D.C.).²

Considering the significant volume of documents to be processed, FBI informs undersigned counsel that it will take at least 500 months to complete its entire production of responsive documents under FBI's standard document-by-document, page-by-page processing

¹ As FBI has previously noted, it estimates that the responsive documents contain a substantial amount of documents compiled for law enforcement purposes that are exempt from production pursuant to Exemption 7(A). FBI further notes that due to the ongoing criminal prosecutions of Cliven Bundy and 17 co-defendants in the United States District Court for the District of Nevada (*see United States v. Bundy, et. al.*, 16-cr-00046 (D. Nev.)), it is possible that certain files may be temporarily inaccessible or FBI may otherwise be unable to process documents pursuant to this proposed schedule. In the event that occurs, FBI will make an appropriate motion for a stay.

² FBI is aware that this Court has granted in some instances, and denied in others, FBI's request that it be permitted to seek summary judgment based on the applicability of Exemption 7(A) without waiving any allegation or claim that the records are exempt from release for other reasons as well. *See, e.g., Leopold, et. al v. Dep't of Justice, et. al*, 16-cv-1827 (KBJ) (D.D.C.) (April 7, 2017 Minute Order granting FBI's request); *Farahi v. Federal Bureau of Investigation*, 15-cv-2122 (RBW) (D.D.C.) (Jan. 23, 2017 Order denying FBI's request). If the Court were to permit FBI to proceed in that manner here, FBI has advised undersigned counsel that it estimates that the time needed to process the material on a document-by-document basis would be cut approximately in half.

technique proposed above. In light of this lengthy period, FBI stands ready, willing, and able to consider and apply any reasonable limitations on the scope of Plaintiff's significantly broad request. Additionally, due to the large volume of documents and the length of time required to process them under its standard approach, FBI is currently exploring alternative methods of streamlining this extensive process in a manner that permits it to more quickly complete its processing while still meeting its obligations under the FOIA. Although FBI has not yet identified such a method, FBI respectfully requests that it be permitted to further update the Court concerning those efforts on or before June 30, 2017.

Dated: May 31, 2017

Respectfully submitted,

CHANNING D. PHILLIPS, D.C. Bar No. 415793
United States Attorney

DANIEL F. VAN HORN, D.C. Bar No. 924092
Chief, Civil Division

/s/ Melanie D. Hendry
Melanie D. Hendry
Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-2510
melanie.hendry2@usdoj.gov

Counsel for Defendants

OF COUNSEL:

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Washington, D.C. 20535
(202) 324-4964
jonathan.fleshner@ic.fbi.gov

EXHIBIT C

EXHIBIT C



1100 S. 10th Street, Las Vegas, Nevada 89104
T: (702) 731-0000 F: (702) 974-4008
bretwhipple@gmail.com

November 3, 2017

To: Steven W. Myhre
U.S. Attorney's Office
501 Las Vegas Blvd South Suite 1100
Las Vegas, NV 89101
702-388-6296 (Fax)
Steven.Myhre@usdoj.gov

Re: Discovery Request Relating to Video Surveillance

On November 3, 2017, during the court's evidentiary hearing on the destruction of evidence, the defense learned for the first time that law enforcement had conducted extensive video surveillance of the Bundy home, and other relevant locations, during the events of April, 2014. Specifically, witness Mary Hinson conveyed personal knowledge of such video "live streams" being recorded and utilized by the government during the events of April, 2014.

Defendant Ryan Bundy had previously specifically requested this type of material (ECF No. 2526). The government did not disclose discovery in response. The government implied Bundy's description of the material sought was "fantastic[al]."

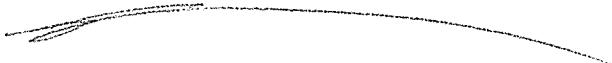
Your office has also had an affirmative duty to disclose and provide evidence favorable to the defense. Video surveillance of the crime scene in this case (the Bundy property, where the conspiracy was allegedly housed and coordinated) is clearly evidence "favorable" to the defense as it would allow the defense to, among other things, rebut evidence of a conspiracy, show the jury where individuals were on specific dates as it relates to their alleged involvement in the conspiracy, and reveal which individuals were present and/or had access to Bundy's property when the alleged conspiracy allegedly occurred (including access to electronic devices allegedly used by Bundy and/or his family in the course of the conspiracy).

Additionally, as your office is aware, the primary law enforcement officer involved in the events underlying this case (Dan Love) has engaged in numerous instances of misconduct, many involving other government actors or witnesses involved in the Bundy case. Mr. Love's apparent access to outrageous and invasive government surveillance of private property, and what he did with that information, is also relevant to matters of government misconduct.

Accordingly, it is our position that your office has had a duty to affirmatively provide the following discovery. To the extent you have not already done so, this letter represents a particularized demand to turn over such discovery immediately:

1. The name and address of any law enforcement officer, or any other person, who was involved in creating, monitoring, saving, or reviewing video surveillance of Cliven Bundy's property, his ranch, access roads to and from his property, or any other surveillance video from May through June, 2014, which portrays any defendant in this case or any unindicted co-conspirator.
2. Copies of any video surveillance of Cliven Bundy's property, his ranch, access roads to and from his property, or any other surveillance video from May through June, 2014, which portrays any defendant in this case or any unindicted co-conspirator.
3. Law enforcement reports or memorandums relating to the video surveillance of Cliven Bundy's property, his ranch, access roads to and from his property, or any other surveillance video from May through June, 2014, which portrays any defendant in this case or any unindicted co-conspirator.
4. Any other previously undisclosed video surveillance as it pertains to the conspiracy charged against Cliven Bundy, any co-defendant, or any unindicted co-conspirator.

SINCERELY,



BRET O. WHIPPLE, ESQ.